

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WE THE PATRIOTS USA, INC., et al. Plaintiffs,)	
)	
)	
)	Civil Action No. 1:23-cv-00773-DHU-LF
)	
MICHELLE LUJAN GRISHAM, in her official capacity as the Governor of New Mexico,)	Consolidated with:
Defendants.)	No. 1:23-cv-00771-DHU-LF
)	No. 1:23-cv-00772-DHU-LF
)	No. 1:23-cv-00774-DHU-LF
)	No. 1:23-cv-00778-DHU-LF
)	No. 1:23-cv-00839-DHU-LF
)	
)	
)	

JOINT MOTION TO STAY PENDING APPEAL

Now come Randy Donk, Gun Owners of America, Inc., and Gun Owners Foundation (“Plaintiffs”), by and through counsel, and state as follows:

1. On October 11, 2023, this Court denied Plaintiffs’ Motion for Preliminary Injunction by order issued in lead case *We the Patriots USA, Inc., et al. v. Grisham, et al.*, Civil Action No. 1:23-cv-00773-DHU-LF. Document No. 27.
2. On November 6, 2023, the Plaintiffs in *Donk, et al. v. Grisham, et al.*, filed their Notice of Appeal to the Tenth Circuit. Document No. 49.¹
3. On November 14, 2023, the *Donk* Plaintiffs filed a Motion to Stay Pending Appeal in 23-cv-00722. Document 60.

¹ Also pending in the Tenth Circuit are the following interlocutory appeals regarding the denial of the motion for preliminary injunction: *We the Patriots, Inc., et al., v. Grisham, et al.* (23-2166) and *Fort, et al., v. Grisham, et al* (23-2167). This Motion is filed on behalf of the *Donk* Plaintiffs only.

4. On November 15, 2023, counsel for the *Donk* plaintiffs was contacted by the Court and requested to obtain the position of the other plaintiffs in the consolidated matters and to then re-file the motion.

5. Counsel immediately sent an email to all counsel for the other plaintiffs, explaining that the Court requested their position and requested that counsel in *Donk* re-file the motion with the other plaintiffs' positions. Additionally, counsel for the *Donk* plaintiffs explained that he would seek to re-file the Motion by close of business the next day to give the other plaintiffs plenty of time to respond.

6. The positions are as follows:

- a. National Association for Gun Rights (23-cv-00771) does not object;
- b. We The Patriots USA, Inc. and Dennis Smith (23-cv-00773) do not object and counsel stated that their position could also be listed as “joining in [*Donk* plaintiffs’] motion;”
- c. Shawn Blas (23-cv-0074) has no objection;
- d. Fort, et al. (23-cv-00778) does not oppose; and
- e. Richard Anderson (23-cv-00839) does not object.

7. Currently, Plaintiffs and Defendants have a Joint Status Report and Provisional Discovery Plan due on November 17, 2023 and a Rule 16 Initial Scheduling Conference set for November 27, 2023. Document 35.

8. Plaintiffs respectfully request that the Joint Status Report and Provisional Discovery Plan and Rule 16 conference be continued until such time that the Court decides this Motion to Stay,

given that if the Court stays this action pending appeal, it would eliminate the need of the Parties and the Court to expend resources and would lead to greater judicial economy.

9. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); accord *Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 880 n.6 (1998). See also *Clinton v. Jones*, 520 U.S. 681, 706, 117 S. Ct. 1636, 1650 (1997) (“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.”).

10. In particular, “[d]istrict courts have the prerogative to decide whether a stay is warranted given the specific circumstances of a case.” *Doe v. Jones*, 762 F.3d 1174, 1178 (10th Cir. 2014) (quoting *Landis*, 299 U.S. at 254). See *Armijo v. Vill. of Columbus*, 2011 U.S. Dist. LEXIS 161644, at *6-7 (D.N.M. Aug. 1, 2011) (“the Court finds that a stay of proceedings pending the interlocutory appeal is appropriate at this point in the interest of judicial economy, as the issues on appeal are related to certain remaining claims in the case and are best tried together.”).²

11. Here, the Tenth Circuit’s decision on Plaintiffs’ interlocutory appeal likely will inform proceedings in this Court and, for reasons of judicial and party economy, this Court should stay proceedings pending the Tenth Circuit’s resolution of Plaintiffs’ interlocutory appeal.

12. This Motion is joined by Defendants, who consent to the relief requested.

Respectfully submitted,

² See *Wolf Designs, Inc. v. Donald McEvoy Ltd., Inc.*, 341 F. Supp. 2d 639, 642 (N.D. Tex. 2004) (“[A] stay pending the outcome of litigation in another court between the same parties, involving the same or controlling issues, is an appropriate means of avoiding unnecessary waste of judicial resources.” (citing *ACF Indus., Inc. v. Guinn*, 384 F.2d 15, 19 (5th Cir. 1967))).

Dated: November 16, 2023

/s/ Stephen D. Stamboulieh

Stephen D. Stamboulieh
Stamboulieh Law, PLLC
MS Bar No. 102784
P.O. Box 428
Olive Branch, MS 38654
(601) 852-3440
stephen@sdslaw.us

Anthony R. Napolitano
Bergin, Frakes, Smalley & Oberholtzer, PLLC
4343 E Camelback Rd, Ste. 210
Phoenix, AZ 85018
(602) 848-5449
anapolitano@bfsolaw.com

Mark J. Caruso
4302 Carlisle Blvd., NE
Albuquerque, NM 87107
(505) 883-5000
mark@carusolaw.com
Attorneys for Plaintiffs

AND

/s/ Holly Agajanian

HOLLY AGAJANIAN
Chief General Counsel to
Governor Michelle Lujan Grisham
490 Old Santa Fe Trail, Suite 400
Santa Fe, New Mexico 87501
(505) 476-2200
holly.agajanian@exec.nm.gov

SERPE ANDREWS, PLLC

/s/ Cody R. Rogers

Cody R. Rogers
2540 El Paseo Road, Suite D
Las Cruces, NM 88001
(575) 288-1453

crogers@serpeandrews.com
*Counsel for Governor Michelle Lujan Grisham,
Secretary Patrick M. Allen, Secretary Jason R. Bowie
and Chief W. Troy Weisler*

CERTIFICATE OF SERVICE

I Stephen D. Stamboulieh, hereby certify that I have on this day, caused the foregoing document or pleading to be file with this Court's CM/ECF system which generated a notice and delivered a true and correct copy to all counsel of record.

/s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh